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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,651	06/11/2001	Joesph J. Bisogno	31507	3108

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EXAMINER

WOLFE JR, WILLIS RAY

ART UNIT PAPER NUMBER

3747

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,651

Applicant(s)

BISOGNO, JOESPH J.

Examiner

Willis R. Wolfe, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-33 is/are allowed.
- 6) ☒ Claim(s) 1-25, 34-42, 44 and 45 is/are rejected.
- 7) ☒ Claim(s) 43 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4-6, 8-10, 13-15, 17-19, 21-23, 34, 35, 38-40, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Diaz et al. Diaz et al discloses a hand held apparatus for providing nutritional information which contains a computer program, a memory for storing codes, a display, a calendar and an input device for a user to input data

Claims 1, 2, 4-6, 8-10, 13-15, 17-19, 21-23, 34, 35, 38-40 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Shepley ('281). Shepley discloses a hand held apparatus for providing nutritional information which contains a computer

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program, a memory for storing codes, a display, and an input device for a user to input data

Claims 1, 2, 4-12, 14, 15 and 17-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Short. Short discloses a nutritional planning system comprising a computer program for recording and displaying nutritional information and an input for a user to enter data.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36, 37, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz et al or Shepley ('281). Diaz et al or Shepley discloses the claimed invention except for the input device being a stylus or a touch screen. It would have been an obvious matter of design choice to change the push button input of Diaz et al or Shepley by utilizing a stylus or touch screen since applicant has not disclosed that a stylus or touch screen solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a stylus or touch screen input device.

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Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Diaz et al, Shepley ('281) or Short in view of Fuller et al. Diaz et al, Shepley or Short discloses the claimed device except for utilization of a color to aid the user in evaluating the product. Fuller et al teaches that it is known in the art to provide a color enhancing display for helping the user evaluate a nutritional product. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the color enhancing feature of Fuller et al with the nutritional program of Diaz et al, Shepley or Short, in order to aid the user in evaluating the product selected.

Allowable Subject Matter

Claim 43 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 26-33 are allowed.

Conclusion

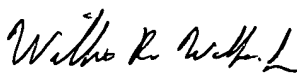
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references of Abrams et al, Shepley ('115), Alabaster and Socinski are cited to show computer programs for aiding the user with the nutritional values of a food product.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Willis R. Wolfe, Jr. whose telephone number is (703) 308-1950. The examiner can normally be reached on Tuesday, Wednesday and Friday (4:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry C. Yuen can be reached on (703) 308-1946. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Willis R. Wolfe, Jr.
Primary Examiner
Art Unit 3747

WRW
March 19, 2004